

EXHIBIT B

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

COMPLIANT CORPORATION
4670 Richmond Road
Warrensville Heights, Ohio 44128

Plaintiff,

V.

Donald C. Hutchins
1047 Longmeadow Street
Longmeadow, Massachusetts 01106

Defendant

CASE NO: CV04540066

JUDGE: EILEEN A. GALLAGHER

**AFFIDAVIT OF
DONALD C. HUTCHINS**

NOW COMES DONALD C. HUTCHINS and upon being duly sworn,
states that:

1. I am over 18 years of age and have personal knowledge of the matters attested to herein.
2. On August 27, 2004 the Compliant Corporation filed this Ohio action against me in retaliation for patent infringement action CA 04-30126 ("126") that I filed against the Cardiac Corporation in Massachusetts federal district court.
3. A case management conference held on 1/25/2005 set a pretrial conference for 3/29/2005 via telephone.
4. On 3/29/2005 during a telephone conference call Judge Gallagher asked how federal case CA 04-30126 was progressing. Upon learning that Compliant had been brought into '126 with all parties present, she said that she would rely on results of the federal case.

5. On 5/26/2005 Judge Gallagher continued to rely on the results of '126 and set a trial date for 12/12/2005 when all agreed that '126 would be resolved.
6. Billing records supplied to the Court at a hearing on July 18, 2006 indicate that lawyers representing Compliant had improper contact with Judge Gallagher's staff attorney that included discussions of procedure, evidence and scheduling after 5/26/2005 and just prior to the filing of Compliant's Motion for Summary Judgment on 7/11/2005.
7. On August 15, 2006 Judge Gallagher granted my motion for Rule 11(C) (1)(B) sanctions against the attorneys representing Compliant as a result of this improper contact. It is clear that in allowing these sanctions the Court simply compared the Calfee billing records with admissions from the staff.
8. These improper contacts influenced the pre-trial direction established by the pretrial telephone conference of 5/25/2005 and led to the Summary Judgment against me.
9. A letter from me to Clerk Fuerst attached as Exhibit A indicates that I requested a delay in a damage hearing set for September 27, 2005 because I was scheduled to be in the State of Texas.
10. With no response from the Clerk's office I filed a Motion for Continuance on September 22, 2005 a copy of which is attached as Exhibit B. Initially the Continuance as accepted by Bridgett McAndrews, Esq. of Judge Gallagher's staff and a new date was scheduled.
11. The next day under the influence of intervention from the Calfee lawfirm, Ms. McAndrews telephoned to say the damage hearing date of September 27th would

not be changed. As a result, I could not defend myself in court and \$127,000 in punitive damages and \$100,000 in punitive damages were assessed against me.

12. Patent action CA 04-30126 continues in federal court. This fact upholds the validity '126 and stands as proof that my filing of '126 was not injudicious or subject to punitive damages.
13. These same billing records supplied to the Court at the hearing held on July 18, 2006 indicate that lawyers representing Compliant also had improper contact with Judge Gallagher's staff that destroyed my opportunity to defend myself at the damage hearing.
14. It is clear that the sanctions against the attorneys representing Compliant granted by Judge Gallagher on August 15, 2006 also address the improper contacts recorded prior to the damage hearing that eliminated my opportunity to defend myself.
15. As a result of my inability to defend myself at this hearing, Compliant was awarded seven times the compensatory damages they requested in their Complaint plus punitive damages of \$100,000 with no proof of malicious intent.

FURTHER AFFIANT SAYETH NAUGHT


DONALD C. HUTCHINS

Sworn to before me and subscribed in my presence the 22nd day of August, 2006


